decision of the executive department. *Foster* v. *Neilson*, 2 Pet. (U. S. Sup. Ct.) 253, 314; *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 149. The Executive Department of the United States Government has recognized the treaty as being in force. TREATIES AND CONVENTIONS, 921 (1889); TREATIES IN FORCE, 520 (1899).

The case may also be supported on the principles set forth above. The Kingdom of Prussia has remained a distinct entity, and is capable under the Constitution of the German Empire of carrying out its obligations; and even though technically the adoption of that constitution was a breach of the treaty, yet the United States never acted upon it. Furthermore, an extradition treaty is not the kind of treaty a state after such a change in its political status cannot reasonably be expected to carry out, for its execution involves purely ministerial acts, and its object, the mutual helpfulness of returning fugitives from justice, is as desirable after the change as before. Only one other case involving this question has arisen in this country, and in that case the decision was the same. *In re Hermann Thomas*, 12 Blatchf. (U. S. Circ. Ct.) 370. A number of cases have come up in the courts of France and Italy growing out of the union of the Italian states in 1860. Almost without exception the courts have held that the Treaty between France and Sardinia contracted in 1760 remains binding. *Inconomidis* c. *Coude*, 6 CLUNET 69; *Paris*, PALAIS [1867] 275; *Turin*, GIURISPRUDENZA [1865] 240; *Turin*, LEGGE [1876] 853. A few publicists have discussed the question, but they are not unanimous. See R. LE BOURDELLÈS, De l' application du traité du 24 Mars 1760 entre la France et la Sardaigne, 9 CLUNET 389, 390 *accord;* PASQUALE FIORE, De l'execution des actes et des jugements étrangersen Italie, 5 CLUNET 235, 244 *contra.*

LEGISLATIVE CONTROL OVER MUNICIPAL CORPORATIONS. — The question of the extent of legislative control over municipal corporations has occasioned a square conflict of opinion among the courts of this country. One line of cases by decisions or *dicta* has laid down the broad proposition that municipal corporations are the creatures of the legislature, and except for constitutional limitations, expressed or clearly implied, entirely subject to its control. *Commonwealth* v. *Moir*, 199 Pa. St. 534. On the other hand, in many states the doctrine has been established that municipal corporations cannot be deprived of the right to local self-government; and this view is rested upon either one of two grounds: implied constitutional guarantee, or implied reservation to that effect. *People* v. *Hurlbut*, 24 Mich. 44; see *The Right to Local Self-Government*, 13 & 14 HARV. L. REV. The result reached in this second class of cases commends itself as being in accordance with the spirit of our institutions and prevailing views of political expediency, but it is doubtful whether it can be supported upon principle. The constitutionality of an act must be determined by reference to the constitution itself, and while undoubtedly certain restrictions upon the power of the legislature may be implied from the language of that instrument, it is only where the implication is strong and clear that the courts are justified in asserting its existence. See 15 HARV. L. REV. 531.

Even those courts that have championed the right of the municipality to self-government have confined that right to matters of purely local

concern. The principle upon which this distinction is based is that the municipality acts in a dual capacity, as the agent of the state with regard to certain matters and as the agent of its own inhabitants with regard to others, and in respect to the former it is subject to the complete control of the state. *People* v. *Common Council of Detroit*, 28 Mich. 228. While extremely difficult of application, the distinction is indispensable if the doctrine of local independence is accepted. The difficulty lies in drawing the line between matters of general and matters of local concern. In two recent cases it is held that the management of the municipal waterworks and fire department is a matter of purely municipal concern, and that a statute transferring their control to a state board is an unconstitutional interference with the right of municipal self-government. *State* v. *Barker*, 89 N. W. Rep. 204 (Ia.); *State* v. *Fox*, 63 N. E. Rep. 19 (Ind., Sup. Ct.). Although the weight of authority sustains these conclusions there are decisions *contra*. *David* v. *Portland Water Committee*, 14 Or. 98.

A conflict of opinion must necessarily arise upon this question because of the nature of the problem to be solved. The courts are called upon to decide whether the empowering of a municipality to carry on a certain work is a delegation by the state of a matter of general concern, or merely the grant of power to do things in the doing of which the state as a whole has no particular interest. Inasmuch as whatever involves the health and prosperity of a large body of citizens is a matter of interest to the entire state, the administration of matters local in their nature is likely to become of state concern. Where this is true it can fairly be said that the municipality is acting as the agent of the state with respect to those matters and is subject to its control. Under this view the analogy of the decisions upon what constitutes a public use justifying the exercise of the power of eminent domain should be followed, and a wide legislative discretion should be recognized even by those courts that uphold the local independence of the municipality.

DUE PROCESS IN EX PARTE APPOINTMENTS OF RECEIVERS. — Independently of statute, courts of equity in ordinary cases will entertain an application for the appointment of a receiver only after notice or rule to show cause. *Verplank* v. *Mercantile Co.*, 2 Paige (N. Y.) 438. In cases of emergency, however, and where under the circumstances the giving of actual notice is impracticable or inexpedient, a receiver will be appointed without such notice having been given. *Hendrix* v. *American Freehold, etc., Co.*, 95 Ala. 313. The constitutional aspect of such appointments is suggested by a recent decision of the Federal Circuit Court of Appeals for the district of Kentucky. A valid judgment *in personam* had been rendered by a state court against a foreign corporation; the defendant thereupon withdrew all of its tangible property from the state, discontinued its local agencies, and notified policy holders and all others to conduct business with the home office. After return of execution unsatisfied, the state court, upon petition setting forth the facts, appointed a receiver to collect accounts due the judgment debtor from persons within the state and from them to satisfy the judgment. This appointment was attacked by the foreign corporation in a federal court upon the ground that since no notice of the application for the